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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

- - - - -		
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	CRIMINAL ACTION NO.
	)	2:15 cr 130
v.	)	
	)	
ADAM CAIN,	)	
	)	
Defendant.	)	
- - - - -		

TRANSCRIPT OF PROCEEDINGS  
Norfolk, Virginia  
March 24, 2016

BEFORE: THE HONORABLE ARENDA WRIGHT ALLEN  
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE  
By: ELIZABETH YUSI  
Assistant United States Attorney  
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE  
By: RODOLFO CEJAS  
Assistant Federal Public Defender  
Counsel for the Defendant

1 (Hearing commenced at 11:02 a.m.)

2 **THE CLERK:** United States of America versus Adam  
3 Cain, Criminal Case Number 2:15 CR 130.

4 Miss Yusi, is the government ready to proceed?

5 **MS. YUSI:** The government's ready. Good morning,  
6 Your Honor. With me I have Special Agent Dave Desy with the  
7 FBI.

8 **THE COURT:** All right. Agent Desy, good to meet  
9 you. And, Miss Yusi, it's good to see you this morning.

10 **THE CLERK:** Mr. Cejas, is the defendant ready to  
11 proceed?

12 **MR. CEJAS:** Yes. Good morning, Your Honor.

13 **THE COURT:** All right. Mr. Cejas, it's good to see  
14 you as well. If you and your client could please come to the  
15 podium so he could be sworn, I would appreciate it.

16 **THE CLERK:** You do solemnly swear, or affirm, that  
17 the testimony you're about to give in this case, shall be the  
18 truth, the whole truth, and nothing but the truth, so help  
19 you God.

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** All right. Mr Cain, it's good to see  
22 you this morning as well.

23 On December 10, 2015, with a written plea agreement  
24 you appeared before Judge Krask of our court and you pled  
25 guilty to Count 3 of the indictment and it charges you with

1 use of facility of interstate commerce to entice minor to  
2 engage in sexual activity in violation of Title 18, United  
3 States Code, Section 2422(b). Judge Krask accepted your plea  
4 and continued the matter for sentencing. And I hereby accept  
5 your plea of guilty as well and find you guilty of that  
6 count.

7 And then I have reviewed the presentence report that  
8 was prepared on February 18, 2016, along with the new  
9 information and the addendum which was prepared on March 15,  
10 2016, by Mr. Jason Cole. And he is the probation officer  
11 that's seated in the box, jury box.

12 And the government has no objections to the PSR.  
13 And Mr. Cejas does have objections to paragraphs 16 through  
14 21, and that's the cross reference arguing that the evidence  
15 doesn't demonstrate that you engaged in the conduct for the  
16 purpose of producing a visual depiction. And you believe, or  
17 Mr. Cejas believes, that the proper guidelines are calculated  
18 in paragraphs 11 through 15 of the PSR versus paragraph 16  
19 through 21.

20 All right. Mr. Cejas, have you had an opportunity  
21 to review the PSR and the new information and the addendum  
22 with your client?

23 **MR. CEJAS:** Yes, I have.

24 **THE COURT:** All right. And other than the objection  
25 that I've just noted, are there any other errors in the

1 report?

2 **MR. CEJAS:** No. No, ma'am.

3 **THE COURT:** All right. More importantly, Mr. Cain,  
4 did you review the PSR and the new information and the  
5 addendum with Mr. Cejas?

6 **THE DEFENDANT:** Yes, ma'am.

7 **THE COURT:** All right. Did you have adequate time  
8 to review the information with Mr. Cejas?

9 **THE DEFENDANT:** Yes, ma'am.

10 **THE COURT:** All right. And other than the objection  
11 I just noted is everything else in the PSR and the new  
12 information in the addendum true and correct?

13 **THE DEFENDANT:** No.

14 **THE COURT:** No, it's not true and correct?

15 I'm sorry. Other than the objection that I noted  
16 already, is everything else in the PSR -- the presentence  
17 report and the addendum and the new information true and  
18 correct?

19 **THE DEFENDANT:** Yes, ma'am.

20 **THE COURT:** And is the PSR an accurate reflection of  
21 your history and characteristics?

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** All right. All right. That being the  
24 case, I'll hear from the government first on the objection  
25 and then you, Mr. Cejas.

1           **MR. CEJAS:** Thanks, Judge.

2           **THE COURT:** And your response. All right, Miss  
3 Yusi.

4           **MS. YUSI:** Your Honor, I would like to call Special  
5 Agent Desy to the stand briefly.

6           **THE COURT:** This pertains to the cross reference?

7           **MS. YUSI:** Correct.

8           **THE COURT:** All right. Absolutely.

9                         DAVID DESY, called by the government, having  
10 been first duly sworn, was examined and testified as follows:

11                         DIRECT EXAMINATION

12 BY MS. YUSI:

13 Q. Good morning. Could you introduce yourself to the court  
14 please.

15 A. Good morning. My name is David Desy. I'm an FBI agent  
16 in our Norfolk Field Office.

17           **REPORTER:** Could you spell your last name.

18 Q. I was just going to ask if you could spell your last  
19 name.

20 A. Desy is spelled D E S Y, Delta Echo Sierra Yankee.

21 Q. And are you the case agent on the prosecution against  
22 Mr. Cain?

23 A. Yes, I am.

24 Q. And are you familiar with the victim Jane Doe in the case  
25 as well as the allegations?

1 A. Yes, I am.

2 Q. Now in this particular case -- I'm not going to go into  
3 the background because it's all forward or before the court.  
4 I'm going to -- can you tell us about, just briefly, what was  
5 found on the defendant's cellphone?

6 A. There were five pictures that were found on his  
7 cellphone. Two of them were of the victim. One close up of  
8 her vagina. The second one was of her buttocks. And then  
9 the other three pictures were pictures of her as well as the  
10 defendant when they were having sex.

11 Q. Okay. And were these all taken at the same time or  
12 various times?

13 A. Four of them were taken on the same day, which was  
14 August 8th, and then -- 2015. And then the fifth one was  
15 taken three days earlier on August 5th.

16 Q. Okay. I'm going to show you what I'd like to mark as  
17 Government's Exhibit 1. Can you tell us what that is?

18 A. That's the picture that was taken on August 5th of the  
19 victim's vagina close up.

20 Q. Okay. And I'm going to show you what's -- I'm going to  
21 mark as Government's Exhibit 2. Can you tell us what those  
22 are?

23 A. Those are the four pictures that were also on Mr. Cain's  
24 cellphone that were taken on August 8th.

25 Q. Okay.

1 A. It's the one of the buttocks and then the three of when  
2 they had sex.

3 Q. Okay. Did you talk to Mr. Cain about these images?

4 A. I did, yes.

5 Q. And what did he say?

6 A. He said that they were of the victim and that he had  
7 taken the two that were of the close ups of the vagina and  
8 the buttocks but that she had taken the three when they had  
9 had sex. He had said something to the fact of she wanted him  
10 to have something to remember him by.

11 Q. Okay. Who's phone -- but with his phone?

12 A. With his phone.

13 Q. All right. And then did -- was the victim ever -- she  
14 was interviewed?

15 A. She was.

16 Q. And did she say anything specifically just about the  
17 images being taken?

18 A. She did. She was upset when she learned that Mr. Cain  
19 said she had taken the photos. She said that that was a lie  
20 and that he was the one that wanted the photos and that he  
21 had taken them with his cellphone.

22 Q. Did she recognize herself in these images?

23 A. She did, yeah.

24 **MS. YUSI:** Those are all my questions, Your Honor.

25 **THE COURT:** All right. Thank you, Miss Yusi.

1 Mr. Cejas.

2 CROSS-EXAMINATION

3 BY MR. CEJAS:

4 Q. In your discussions with Jane Doe, she did not indicate  
5 that there was any discussion about photographs prior to them  
6 actually being taken, is that correct?

7 A. I don't remember her talking about it, no, sir.

8 Q. And that this --

9 MR. CEJAS: All right -- all right. I don't have  
10 any further questions.

11 THE COURT: All right. Thank you, Mr. Cejas.  
12 Anything additional, Miss Yusi.

13 MS. YUSI: No, Your Honor.

14 And for purposes, I'm not sure if these images need  
15 to be admitted, and if they were to be admitted, I would like  
16 them under seal obviously.

17 THE COURT: All right. I'll do that. Can I see  
18 them real quick, Mr. White.

19 Then I have a question for you, Agent Desy.

20 Based on your investigation do you know whether or  
21 not the defendant had his phone with him when he would travel  
22 up to Virginia to pick up Jane Doe?

23 THE WITNESS: Yes, ma'am. He did have his phone. I  
24 both asked him and her, and they both said he always had it  
25 with him.

1           **THE COURT:** All right.

2           **THE WITNESS:** I think these three were also.

3           **THE COURT:** All right. Anything in light of my  
4 question, Miss Yusi?

5           **MS. YUSI:** No, Your Honor.

6           **THE COURT:** Mr. Cejas?

7           **MR. CEJAS:** No, Your Honor.

8           **THE COURT:** All right. I do. I have one more  
9 question actually. What is the relationship? Is it a niece?

10          **THE WITNESS:** I believe they are second cousins.

11          **THE COURT:** Second cousins.

12          **THE WITNESS:** Yes.

13          **THE COURT:** I'm going to admit those. And we are  
14 going to place them under seal and affix them to Mr. Cole's  
15 original PSR. Second cousins?

16          **THE WITNESS:** Yes, ma'am.

17          **THE COURT:** All right. Anything else, Mr. Cejas?

18          **MR. CEJAS:** No, Your Honor. I think our information  
19 is that I believe that they are third cousins but I don't --

20          **THE COURT:** Third, okay.

21          **MR. CEJAS:** Beyond that, no.

22          **THE COURT:** All right. Sir, thank you for your  
23 testimony.

24          **THE WITNESS:** Yes, ma'am.

25          **THE COURT:** All right.

1           **MS. YUSI:** Your Honor, just to clarify, maybe  
2 Mr. Cole can clarify. If they are affixed to his PSR, does  
3 that mean it's going to be traveling to BOP with him?

4           **THE COURT:** Will it go to the BOP? I don't want it  
5 to go to the BOP.

6           **MR. CEJAS:** Yes, I believe it go to the BOP.

7           **MR. COLE:** Yes, it will. I believe anything  
8 attached to the presentence report will go.

9           **THE COURT:** No, I don't want that. So I'll just  
10 place it under seal and get it back to Madam Lorraine.

11           **MS. YUSI:** Thank you, Your Honor.

12           **THE COURT:** No, you're all right.

13           All right. Anything evidence on this issue,  
14 Mr. Cejas, or just argument?

15           **MR. CEJAS:** Just argument.

16           **THE COURT:** All right. I'll be glad to hear from  
17 you, Miss Yusi.

18           **MS. YUSI:** Your Honor, as stated in the PSR, we do  
19 believe the cross reference to 2G2.1 the production guideline  
20 is appropriate.

21           And I know the defendant relies on the  
22 Palomino-Coronado decision which is for a production  
23 conviction and does not deal with a cross-reference which is,  
24 in my opinion, and based on the language much more lenient in  
25 terms of what we have to prove.

1 First of all, the cross reference specifically says  
2 that it's to be construed broadly.

3 And, secondly, you know, we don't have a beyond a  
4 reasonable doubt standard but a lower standard for sentencing  
5 purposes. But regardless of the burden, we do believe that  
6 we have showed that in this particular case, Mr. Cain, while  
7 it wasn't his primary purpose, they didn't talk about it, it  
8 was a purpose.

9 And in the Cox opinion, in the Fourth Circuit, they  
10 specifically say it doesn't have to be a single-minded  
11 purpose that he transports or uses the child to produce these  
12 an images but it is one purpose. And for someone to pose  
13 someone, particularly the one of the buttocks, they are  
14 posing this person and then they are taking an image and they  
15 are doing this on purpose and it's purposeful conduct.

16 So we clearly believe that the cross reference is  
17 appropriate in this case.

18 **THE COURT:** All right. Thank you, Miss Yusi.  
19 Mr. Cejas.

20 **MR. CEJAS:** Yes, Your Honor.

21 Your Honor, first of all, let me state that we  
22 understand that Coronado -- Palomino-Coronado dealt with  
23 proof beyond a reasonable doubt but the cases that it cited,  
24 the Fourth Circuit used in reaching its opinion, were cases  
25 that were not necessarily proof beyond a reasonable doubt.

1 And it did a lengthy examination of what is required in order  
2 for there to be evidence that the crime was committed with  
3 the purpose of taking -- taking these photographs.

4 And so, what we would suggest, and certainly  
5 understand that this is not beyond a reasonable doubt. This  
6 is preponderance, but I think what is good about the  
7 Palomino-Coronado decision is that it went through a variety  
8 of factors and examined it thoroughly and those were cases  
9 where the standard was preponderance of the evidence.

10 So I think when you look at the number of  
11 photographs, the certain poses, videotaping, all of these  
12 things, they are simply not here.

13 In the case cited -- and of course I address this in  
14 my brief so I'm not going to belabor it so much, but I think  
15 the number of photographs, for example, in the case that was  
16 cited, US versus Ortiz-Graulau, if I'm pronouncing that  
17 correctly, there were over 50 photographs taken and the court  
18 in that case held that there was a strong inference simply  
19 because of the number of photographs. Here we have five.

20 And the court asked -- in fact asked Agent Desy  
21 whether or not it had been used with his cellphone. Well  
22 again, in that case, and I think -- I think in almost in any  
23 situation, particularly in these days, the fact that someone  
24 has their cellphone with them is not a factor I would suggest  
25 that can be considered. If he always carried the cellphone

1 with him, and he carried it as he was traveling, that's not  
2 like -- unlike many other individuals. That's safe to say  
3 that many of us in here would have our cellphones if we could  
4 bring them into court. Certainly the court security has his  
5 cellphone. I'm sure many others that have their cellphones.  
6 It's not unusual to travel with a cellphone.

7           It would be different if he did not travel with a  
8 cellphone and then he produced it simply for the purpose or  
9 at the time of taking these pictures. It would have been  
10 different if the pictures were taken with a camera as it was  
11 in one of the additional cases that we cited.

12           In fact, in the case -- in Cox itself it was a  
13 camera. It was not a cellphone. It was -- there was  
14 evidence of recording equipment, a tripod and so forth that  
15 had been used in cases where the cross reference has been  
16 upheld. And that's not the case here.

17           There is also -- there is also additional evidence  
18 in Cox. For example, in Cox there was a use of threats.  
19 There is money -- use of money and alcohol. There was also  
20 an attempt by the defendant in that case to obstruct justice.

21           Simply not enough evidence, even at the  
22 preponderance level, to justify applying the cross reference.  
23 I think one of the things that I think that's significant is  
24 Agent Desy testified that it was his idea to take them. So  
25 my question was what -- had that been discussed prior. The

1 answer is he doesn't have any information that it was. And  
2 that is significant because in these other cases where the  
3 cross reference was applied, there was some prior discussion.  
4 I want you to look this way. I want you to look that way so  
5 I can have the pictures. It was done prior to the travel.  
6 And so in this case all the evidence suggest quite the  
7 contrary. We have the conversations that are listed in the  
8 presentence report. There is no conversation of I plan to do  
9 this. I want you to dress this way. I want you to pose this  
10 way. I want you to do all these things. It wasn't done  
11 prior.

12 And so since the goal of the cross reference is to  
13 address conduct that suggest an intent to produce photographs  
14 or to travel for the purpose of making photographs as you're  
15 engaged in the sexual activity, I simply don't believe that  
16 it's enough. There is no prior conversation. There is no  
17 large number of photographs. The only thing used here is a  
18 cellphone which for all we know, based on his testimony, is  
19 that this is something that he carries all of the time.

20 So again, I don't believe that it's appropriate,  
21 even under the preponderance standard, it's simply not  
22 enough. And even though it is to be construed broadly, that  
23 doesn't mean just because there is a picture, then the cross  
24 reference applies. There has to be more. And the government  
25 hasn't cited anything more other than the fact that it was

1 his idea. That may have been, but the question is was it his  
2 idea prior. Did they discuss it on the long trip from  
3 Virginia to North Carolina? Was there camera equipment? Was  
4 anything else involved? And the answer is no.

5 So I believe under those circumstances it should not  
6 apply. Thank you, Your Honor.

7 **THE COURT:** Thank you, Mr. Cejas. Anything  
8 additional, ma'am?

9 **MS. YUSI:** No.

10 **THE COURT:** All right. The guideline -- we are  
11 looking at paragraph 16 through 21 of the PSR. And the  
12 applicable cross reference 2G1.3(c)(1) states that if the  
13 offense involved causing, transporting, permitting, or  
14 offering or seeking by notice or advertisement, a minor to  
15 engage in sexually explicit conduct for the purpose of  
16 producing a visual depiction of such conduct, apply 2G2.1, if  
17 the resulting offense level is greater than that determined  
18 above.

19 So the court is going to overrule the objection and  
20 we're relying on the case of United States versus Cox at 744  
21 F.3d 305, Fourth Circuit, 2014 decision. United States Court  
22 of Appeals for the Fourth Circuit held that the purpose  
23 requirement of 2G2.2, that is, that the defendant acted for  
24 the purpose of producing a visual depiction of sexual  
25 explicit conduct "is satisfied anytime one of the defendant's

1 purposes was to produce a visual depiction of the sexually  
2 explicit conduct." "Producing the depiction need not be the  
3 defendant's sole, or primary, purpose."

4 In this instance, the court finds that although Cox  
5 interprets the cross reference listed in 2G2.2 rather than  
6 2G1.3(c), which is at issue here, the exact same wording is  
7 used in both cross reference subsections in relation to when  
8 the cross reference should be applied.

9 The court also finds that in accordance with  
10 application note 5 for 2G1.3(c) (1) and the cross reference  
11 must be construed broadly.

12 So based on all the facts before the court, the  
13 arguments of the government, the court is going to overrule  
14 the objection. And the report will remain as written by  
15 Mr. Cole.

16 Okay. Mr. Cejas, if you and your client could come  
17 back to the podium please.

18 All right. Mr. Cain, and the court's going to adopt  
19 the factual statements contained in the presentence report as  
20 its finding of fact as written by Mr. Cole. And so that  
21 means that your offense level is a 42 and that takes into  
22 account that three-level reduction for acceptance of  
23 responsibility. Two of those points you controlled. One  
24 point the government controlled. So the court's granting the  
25 government's motion. And then your criminal history category

1 is a two and your guideline range is 360 to life. Hearing no  
2 objections from the lawyers or the probation officer,  
3 Mr. Cain, do you understand what I just said?

4 **THE DEFENDANT:** Yes, ma'am.

5 **THE COURT:** Okay. And then the supervised release  
6 is five to life. And hearing no objections by the lawyers or  
7 the probation officer, sir, do you understand what I just  
8 said?

9 **THE DEFENDANT:** Yes, ma'am.

10 **THE COURT:** All right. Any additional evidence or  
11 just argument, Miss Yusi?

12 **MS. YUSI:** Just argument.

13 **THE COURT:** And how about you?

14 **MR. CEJAS:** Just argument.

15 **THE COURT:** All right. If you gentlemen can have a  
16 seat, we'll hear from the government, then we'll hear from  
17 Mr. Cejas.

18 **MS. YUSI:** Your Honor, we incorporate our position  
19 paper and I'm not going to rehash everything that we have  
20 stated in it, but we do believe that under the 3553 factors a  
21 sentence of 360 months would be appropriate and not greater  
22 than necessary to achieve the purposes of sentencing.

23 In terms of the history and characteristics of this  
24 offense and of the defendant himself, as the defendant was  
25 told by the magistrate court when he changed his plea, the

1 court will look at all relevant conduct. And this includes  
2 not just this victim but the one that he had prior to this.

3 This is a man who found at least two victims by  
4 exploiting trust relationships with his family. First, in  
5 2008, as the presentence report talks about, when he was  
6 33 years old, he was convicted of a sexual offense of a child  
7 under 13 years old. And we know this to be another relative  
8 of his.

9 He was allowed to plead to indecent liberties with a  
10 child, and basically given a slap on the wrist with a  
11 suspended sentence and probation. He was given a huge break  
12 to clean up his life, get help, address whatever things were  
13 going on within him that had him seek out these underage  
14 girls for sexual purposes, but he also couldn't even do that.  
15 He violated his probation, which -- and he's still given his  
16 suspended sentence, and he was still under probation during  
17 the current offense.

18 If we fast forward to 2015, we are talking about a  
19 different relative. This time she was 15 years old on a  
20 different side of the family who did not necessarily know  
21 about his criminal history.

22 They started talking romantically and then sexually  
23 online, and then they talked about what they could do  
24 together sexually when he picked her up when he would drive  
25 from Roanoke Rapids, North Carolina, to Windsor, pick her up

1 and then bring her back to his house.

2 And this house in Roanoke Rapids was the same house  
3 where he lived with his mother and stepfather. He had her  
4 stay in his room and had sex with her.

5 We also know from earlier testimony and what he  
6 admitted to in the statement of facts that he also  
7 memorialized the abuse in the images.

8 We also know from her text messages that we talked  
9 about in our position paper that she was trying to get  
10 pregnant. She wanted to get pregnant. This is clearly a  
11 very naive, troubled girl, who does not understand what the  
12 implications of this would be at 15 years old. And instead  
13 of being someone, an adult, who would, you know, kind of help  
14 this, he has sympathy for her, said don't worry, baby, we'll  
15 try next time when you're more fertile. It's very, very  
16 disturbing on so many levels. It's sad for this girl but  
17 it's also very scary that this adult man is encouraging,  
18 encouraging this.

19 Clearly, the 15-year old has a lot of issues. She  
20 is looking for love and attention. Then she found this  
21 defendant who took advantage of these issues, much to her  
22 detriment.

23 Now, Your Honor, Mr. Cain was given a pass in his  
24 first time and he was given a lower sentence -- or an  
25 indecent liberties, so a lot of enhanced penalties that may

1 have normally applied if it was a sex offense under state law  
2 don't apply in this particular case, but he sought this  
3 relationship out. He sought this abuse out. This is not  
4 something that just happened next door or he just fell into  
5 this. He sought it out. He drove up there. He got her. He  
6 talked her online.

7           The Government avers that there is not much that's  
8 probably going to give him pause from future behavior of  
9 this, and it's very disturbing and the court needs to worry  
10 about society, about protecting society, about protecting  
11 other relatives or minors that this particular defendant  
12 might be from. He has his own child. He was married during  
13 this time, but that did not stop him. He surrounded himself  
14 with victims.

15           Now in terms of other sentences available, Your  
16 Honor, I realize the coercion and enticement is a little bit  
17 of a different charge that he pled to. We see a lot more  
18 production, which he was originally charged with and this  
19 obviously involves production, things like that, but these  
20 are very heavy sentences because these are very serious  
21 crimes, and ones that have a lot of implications. And in  
22 this particular case a lot of implications for a 15-year old  
23 girl that's still having to go on with her life.

24           Your Honor, defendant's action were heinous. And  
25 his crimes of conviction, one of the worst kind that this

1 court can see. And in this particular case we do believe  
2 that the guidelines are reasonable. And the 360-month  
3 sentence would be at the very low end of the guidelines and  
4 therefore we are asking that the court impose that. Thank  
5 you.

6 **THE COURT:** Thank you, Miss Yusi. Mr. Cejas.

7 **MR. CEJAS:** Thank you, Your Honor.

8 **THE COURT:** You're welcome.

9 **MR. CEJAS:** Obviously, we addressed our position in  
10 the brief that we submitted, so I'll be relatively brief.

11 I think I'm not going to try to make light of the  
12 offense or the activities. I would just suggest that  
13 30 years is greater than necessary under these circumstances.  
14 He is 40 years old. He will be -- if the court imposed that  
15 sentence, he would -- he would be 70 years old before he got  
16 out. I'm assuming that he didn't face any civil commitment  
17 or anything of that nature.

18 So I believe that what is sufficient but not greater  
19 than necessary is a sentence closer to 180 months. It is a  
20 stiff sentence. Yes, he received light treatment before but  
21 I do not believe under these circumstances that 30 years is  
22 warranted.

23 He will be on supervised release for the remainder  
24 of his life. I know that we ask for supervised release not  
25 to exceed 15 years. I don't believe that it's absolutely

1 necessary but I'm guessing that that will not occur, so I  
2 know he will be on supervised release for probably for the  
3 remainder of his life.

4           So under these circumstances when he gets out, it  
5 will be a completely different world that he looks at.  
6 Completely different life that he will have for himself. He  
7 will have undergone years and years of treatment, which he  
8 did not undergo before. To that extent we are asking the  
9 court to consider recommending that he be confined in Butner  
10 for the treatment program there, and secondarily Devens. I  
11 believe those are the programs on the East Coast, but Butner  
12 is closest to his parents and his siblings. And they have  
13 still maintained contact with him despite what's occurred  
14 here.

15           These are serious charges. I'm not going to make  
16 light of them. I'm not going to suggest that it doesn't  
17 warrant significant punishment, but he did confess to the  
18 FBI. He drove up from Roanoke Rapids to the FBI Office in  
19 Chesapeake. He certainly was under no obligation to do that.  
20 He didn't try to flee. And he pled guilty, and I believe  
21 that a guilty plea should be worth something. This is not  
22 something that was -- he maintained his right to go to trial  
23 and then have this victim testify which would have been even  
24 more trauma. So I think that that is something to consider.  
25 It is worth something. And it is -- 30 years is just greater

1     than necessary under these circumstances.

2             Thanks, Judge.

3             **THE COURT:** All right. Thank you, Mr. Cejas.  
4     Anything additional, Miss Yusi?

5             **MS. YUSI:** No, Your Honor.

6             **THE COURT:** All right. Mr. Cain, if you can join  
7     Mr. Cejas at the podium please, I would appreciate it.

8             All right. Mr. Cain, I know Mr. Cejas has told you  
9     you have the right to make a statement, and if you want to,  
10    now would be the time to do so. If you don't want to make a  
11    statement, I will not hold it against you. And if you're not  
12    sure what to do, please speak to Mr. Cejas.

13            **THE DEFENDANT:** Yes, ma'am. I just want to say that  
14    I am deeply sorry for what happened. And if I could go back,  
15    I -- it wouldn't have happened, but I can't change the past.  
16    I can only change the future.

17            And I hope to some day get out, and maybe -- even  
18    though I might not see her again, but be able to take care of  
19    my daughter as far as support goes and stuff like that. I  
20    realize that I probably won't never see her again because my  
21    circumstances but I still like them know that I provided for  
22    her, if it's possible.

23            **THE COURT:** All right.

24            All right. Mr. Cain, and I know Mr. Cejas has  
25    reviewed the factors with you, but I'm going to do it as

1 well. And so you know, I've got to consider the 3553(a)  
2 statutory factors, and I've got to consider the offense and  
3 your criminal history; seriousness of the offense is a factor  
4 I'm looking at; respect for the law is a factor I'm looking  
5 at; punishment is going to be a factor.

6 Deterrence as it pertains to you. There is two  
7 types of deterrence. General deterrence, if somebody else is  
8 out there doing this type of thing maybe they won't, but more  
9 importantly, in this case, specific deterrence to make sure  
10 you don't ever do this behavior again.

11 The public is a concern. Jane Doe is not here, but  
12 she is here as far as I'm concerned. Her spirit.

13 The guidelines are 360 to life. I'm going to look  
14 at your actual conduct, the role, acceptance, obstruction,  
15 and then I'm required to consider treating anybody with  
16 similar offenses with similar criminal histories equally.

17 And so I've got my little chart that I keep up here  
18 in these types of cases. And so the only case that I've had  
19 like this since I've been on the bench is US versus Sandler,  
20 which is at 215 CR 4, and it was the same charge that you  
21 got.

22 And the facts of that case, that defendant  
23 communicated with a 13-year old Jane Doe via computer via  
24 Facebook chat. And he told Jane Doe he loved her. He told  
25 her to stick things in her vagina. Told her to have sex with

1 a dog. Communicated with extremely explicit chat language.  
2 So those are the facts of that case. And the guideline range  
3 for that gentleman ended up being 188 to 235 months. His  
4 criminal history category was a one. And so that's the only  
5 other similarly-situated defendant that I've had on my plate.

6 So I'm considering that, and the facts of that case.

7 Then when I look at the nature and circumstance of  
8 the offense, I always highlight certain factors for the  
9 court. So, number one, we are talking August of 2015.  
10 Number two, M.M. tipped the police. And that was a question  
11 whether or not she was privy to the prior facts of the  
12 conviction, so I'm like, okay, what's up with this family.

13 So in my notes I wrote I'm glad that M.M. tipped the  
14 police. So that's a good thing about the case. I'm always  
15 looking for the good stuff that I can find.

16 At that time when she called the police she said  
17 that you, and you were 40 at that time, had traveled to  
18 Windsor, Virginia, from Roanoke Rapids, North Carolina, to  
19 have sex with Jane Doe who was 15. So we go to Google  
20 because I wasn't real sure where Roanoke Rapids. Is it in  
21 relation to Virginia, but to drive one way is an hour and a  
22 half. So it was an hour and a half trip.

23 Second factor, you're using your computer to  
24 facilitate the sexual relationship with her. And it looks  
25 like that M.M. had given the girl the tablet. And the girl

1 wasn't even supposed to be on the tablet, but when M.M.  
2 looked at it, she discovered the sexual and romantic topics.  
3 So your relationship with the girl has caused the girl to be  
4 disobedient to M.M. and so that's a factor that the court  
5 noted.

6 I consider the chat of August 8, 2015, between you  
7 and Jane Doe. And it's -- what I wrote in my notes it's  
8 disturbing. You're saying, yes baby. She is saying, I don't  
9 think we will have kids. You're saying why. Baby, have some  
10 faith. Baby, we can try when you're most fertile. So what  
11 if it doesn't happen now. We have time, okay.

12 And so it was just this dialogue, this intimate  
13 dialogue sounds like a regular couple planning to have a  
14 child. So that was disturbing to the court.

15 You were on probation at the time. That was the  
16 disturbing to the court.

17 The agents rolled up there to execute the search  
18 warrant and they interviewed you right on the scene it looks  
19 like. And so you say you were leading her on in the belief  
20 that they were in a romantic relationship because she was  
21 depressed and suicidal. That she had an infatuation with you  
22 and I think it was the other way around. That you had never  
23 kissed her on her lips or touched each other sexually.

24 So those were all lies, notwithstanding the fact you  
25 later on got your head together and came up to the FBI up

1 here. But initially out of the gate, you're not being  
2 truthful with the agents that are there.

3 Then we find out that she had last visited about two  
4 weeks ago, and she stayed for a week.

5 Then the images. Before seeing them, I had just  
6 wrote in my notes the vagina, the naked buttocks, and the  
7 vulva, and I have now seen the actual images, so that is  
8 disturbing to the court.

9 And I do credit you though for going to the FBI, and  
10 then subsequently it took you about a week or so, but you  
11 admitted to having sex with her on August 28, 2015. You said  
12 that she is the female in all the photos of your cellphone.  
13 Admitted to taking the pics of her vagina and her buttocks on  
14 the 5th and 8th of August. You allowed her to use the  
15 cellphone to take the three other pictures. Now the agents  
16 tell me that she denied that this morning, but that's what  
17 I've written in my notes. You admitted that you had sex with  
18 her and took the pictures thereafter.

19 And that you had the phone with you when you  
20 traveled up to get her. So I thought that was all good.

21 So what I wrote in my notes is I'm glad on  
22 September 1 when you did meet with the local agents that you  
23 purged yourself of all that because that's a good start for  
24 what needs to happen I think if you want to not commit this  
25 behavior again.

1           At the end of the day, Jane Doe is the victim that  
2 causes us to meet. And so now you're a federal sexual  
3 offender. And I'm looking at punishment, specific deterrence  
4 as it pertains to you, and the general public.

5           I do think it's a great decision that once you met  
6 with him and confessed, that you also met with the Judge of  
7 our court and pled guilty and you met with Mr. Cole, and you  
8 admitted your guilt as well. And as you know, if you had not  
9 gotten that three-level reduction for acceptance of  
10 responsibility your guidelines would be life. So you have  
11 gotten credit for that. The guidelines are not life. The  
12 guidelines are 360 to life, so I think that's a great  
13 decision and I hope you continue to be truthful with all your  
14 treatment providers when you're in the Bureau of Prisons.

15           Your criminal history wasn't that bad I didn't  
16 think. Initially you have the failures to appear, so you got  
17 zero points for that. But then, the indecent liberties  
18 conviction, and the government's alluded to it and I'm  
19 looking at it as well, and so I need to and so it's telling  
20 me that the victim regarding your state conviction was 12  
21 years old, M. Cain, who had been sexually assaulted by her  
22 uncle, you, who were 33 years old. You were living in the  
23 home with the child. Contact with the victim revealed that  
24 you had rubbed your thing against the victim's private part  
25 but did not put his thing inside her private part.

1           Approximately two weeks earlier when the victim's  
2   aunt was in the hospital you had the child lie down a cross  
3   her bed, both of their pants were down and you rubbed your  
4   penis up and down her buttocks. The victim's 10 year old  
5   brother looked under the locked door and observed you and the  
6   victim's clothing on the floor. And then according to the  
7   victim, you had done this several times before. Each time  
8   had given her money in the amounts of 20 and 40 dollars in  
9   exchange for being able to perform sexual acts upon her  
10   beginning when she was six years old.

11           So the window that we are talking about here seems  
12   to be from the age of 6 to 12 for the victim that's  
13   identified in that state conviction. The victim did not tell  
14   anybody about her uncle because he gave her money and  
15   threatened to beat her with a belt. She described the sex  
16   acts as something slammie and sticky would come from his  
17   private part onto her leg and his breathing would be loud as  
18   if he had been running.

19           The child received a medical evaluation and the  
20   investigating officer spoke with the grandmother of the  
21   victim. The grandmother advised that she had questioned her  
22   granddaughter. And the victim told her that the defendant,  
23   you, had not put his penis inside her but had hurt her by  
24   doing so with his finger. The victim stated that the  
25   defendant had offered her a hundred dollars if she would

1 allow him to put his penis inside her but she refused. The  
2 grandmother relayed that the victim and the victim's older  
3 sister, J. Hewett, now 16 years old, had each made  
4 allegations that the defendant, you, had sexually abused them  
5 but had subsequently changed their stories. The grandmother  
6 recounted knowing -- the grandmother Amy Cain recounted  
7 knowing the defendant since he was 17 years old and he had  
8 reportedly fondled and attempted to have sex with Lorie  
9 Mendez, the biological mother of M. Cain, the 12-year old  
10 victim, when Lorie was 12 to 13 years old. He had also  
11 previously reported sexual interactions with J. Hewett and M.  
12 Cain several years ago.

13 J. Hewett confirmed previously seeing you rub your  
14 penis against M. Cain's vaginal area a number of years earlier  
15 when he had been performing similar things to her. The  
16 defendant had told both girls not to tell and had given them  
17 money after their sexual interactions. Both had reported the  
18 behavior but had changed their stories out of fear the  
19 Department of Social Services would remove them from Amy  
20 Cain's home.

21 So I understand that the conviction as it relates to  
22 the 12-year old victim, evidently now what's going on here  
23 because the state authorities allowed you to plead to what  
24 you pled to. And you got sentenced to what you got sentenced  
25 to.

1           But what is concerning for the court is that we have  
2 for sure the 12-year old victim M. Cain, and then we have for  
3 sure J. Hewett, who was about 16 years old at the time, then  
4 we have the brother who's peeping in on this mess as well.  
5 And then we are not sure about the Lorie Mendez thing.

6           So my point in saying all this is not to beat you up  
7 on all this, and I'm only looking at your conviction as it  
8 pertains to the 12-year old victim, but it's clear to the  
9 court that you have got to -- if you want to have some solace  
10 and cleansing of your conscience and maybe feel good about  
11 yourself for the rest of your days, if I were you, I would  
12 just purge any of this behavior out of your body, give it to  
13 the treatment officials so that they can give you all the  
14 tools that they can possibly give you to help you not want to  
15 do this type of stuff again. Because notwithstanding what  
16 happened or didn't happen, I have to believe that you don't  
17 want to be behaving like this and you don't want this sprayed  
18 up in the sky for all the world to know.

19           So I'm just going through all those facts for you.  
20 You do with it what you want. If the court were you, I would  
21 want to cleanse myself of this so I would at least feel  
22 better about myself as a human being.

23           I make a finding of fact that your risk to re-offend  
24 is very, very high.

25           I've reviewed the PSR as it pertains to your family

1 and all of your siblings. I do make a note that there may be  
2 evidence that you were physically and emotionally abused by  
3 Cain Senior. And then I also make a note that you were  
4 abused at the age of 10 or 11, sexually, from your  
5 baby-sitter. And so maybe that is some of that.

6           So if there is more evidence of that in your life, I  
7 don't know if it is. I'm only going from what's in the PSR.  
8 But if there is any evidence like that that explains maybe  
9 why you have the state conviction and now the federal  
10 conviction, the court encourages you to reveal all that to  
11 the treatment officials down in Butner or Devens because they  
12 are experts in their field, and your goal should want to  
13 become more wholesome.

14           Your mother says that you're a good man with a  
15 problem. That you have been her and her husband's primary  
16 caregiver and source of financial support. You were living  
17 with her when not driving for work. Your mother says that  
18 you did not instigate the relationship or intentionally  
19 become involved with the 16-year old. She never saw any  
20 romantic relationship between you and the victim when the  
21 victim was visiting the residence.

22           And that she, your mom, says you would not have  
23 deliberately endangered or engaged in this process. And I  
24 just wrote in my notes I think your mom's in denial.

25           You're married and separated from Karen. It was

1 noteworthy to believe that Karen was mildly retarded and  
2 immature, per your mom's statement. So that's -- is she  
3 childlike, I don't know, but I just made a note of that.

4           Physically there is nothing there that the BOP can't  
5 handle.

6           Mental health-wise you completed the sex offender  
7 treatment September 21, 2014, as having a satisfactory  
8 relapse prevention plan, low risk to re-offend. Wrong.  
9 Discharged June 3, 2014, and as we know a year later you're  
10 there with Jane Doe. So I don't know how good or bad that  
11 system was but again I'm hoping that you purge your life  
12 history to the BOP officials and hopefully really get to the  
13 bottom of this problem.

14           No substance abuse issues.

15           Your education is all laid out.

16           Employment, I noted that you were a technician  
17 assisting high risk needs children in an elementary school.  
18 So that was scary for the court as well. And that would have  
19 been in late 2007 through January 2008.

20           So I've considered all of the 3553(a) statutory  
21 sentencing factors. And it's the opinion of the court that  
22 360 to life is not greater than necessary if the court  
23 focuses in on the punishment, specific deterrence as it  
24 pertains to you, and protecting the public, and that is  
25 either children outside or children within your home.

1           The reason that we're meeting is because of Jane  
2 Doe. You breached the trust of M.M. and, thank goodness,  
3 M.M. found the evidence.

4           North Carolina to Virginia, approximately an hour  
5 and a half one way, and then back to North Carolina and with  
6 the cellphone with you along the way. The language between  
7 you and Jane Doe on her delicate mind and that language about  
8 the baby. You memorialized the acts. You were on probation  
9 when you did the crime. It's evidence to the court that you  
10 can't control yourself.

11           I've also considered Government Exhibits 1 and 2,  
12 and the testimony of the agent this morning.

13           You're a repeat offender as it pertains to your  
14 relatives and breaching the trust of their guardians, whom  
15 obviously needs some in-depth treatment. And it's got to  
16 stop. And I'm glad that we are able to stop you. And I only  
17 hope, Mr. Cain, that you get a handle on all of this and have  
18 an open and honest discussion with all your treatment  
19 providers in the BOP so you can clear your conscience.

20           Pursuant to the Sentencing Reform Act of 1984, it is  
21 the judgment of the court that the defendant Adam Cain is  
22 hereby committed to the custody of the United States Bureau  
23 of Prisons to be imprisoned for a term of 360 months.

24           Upon release from imprisonment you shall be placed  
25 on supervised release for a term of 30 years.

1           Within 72 hours of release from custody of the  
2 Bureau of Prisons, you shall report in person to the  
3 probation office in the district to which you are released.

4           As reflected in the presentence report, you present  
5 a low risk of future substance abuse, and therefore the court  
6 hereby suspends the mandatory condition for substance abuse  
7 as defined by Title 18, United States Code, Section  
8 3563(a)(5). However, this does not preclude the probation  
9 office from administering drug tests as they deem  
10 appropriate.

11           While on supervision you shall not commit another  
12 federal, state or local crime. You shall not unlawfully  
13 possess a controlled substance and you shall not possess a  
14 firearm or other destructive device.

15           You shall also comply with the following additional  
16 conditions:

17           You shall participate in a program approved by the  
18 United States Probation Office for the treatment and  
19 monitoring of sex offenders, with partial costs to be paid by  
20 you, all as directed by your probation officer.

21           You shall participate in a program approved by the  
22 United States Probation Office for mental health treatment.  
23 The cost of this program is to be paid by you, all as  
24 directed by your probation officer.

25           You shall waive all rights of confidentiality

1 regarding sex offender and/or mental health treatment in  
2 order to allow the release of information to the United  
3 States Probation Office and authorize communication between  
4 your probation officer and your treatment provider.

5           You shall submit to polygraph, penile plethysmograph  
6 testing or ABEL assessment for sexual interest as directed by  
7 your probation officer as part of your sexual offender  
8 therapeutic treatment. The costs of the testing are to be  
9 paid by you, all as directed by your probation officer.

10           You shall not utilize any sex-related adult  
11 telephone services, websites or electronic bulletin boards.  
12 You shall submit any records requested by the probation  
13 officer to verify compliance with this condition including,  
14 but not limited to, credit card bills, telephone bills, and  
15 cable and/or satellite television bills.

16           You shall not have any access to or possess any  
17 pornographic material or pictures displaying nudity or any  
18 magazines using juvenile models or pictures of juveniles.

19           You shall have no contact with minors unless  
20 supervised by a competent, informed adult, approved in  
21 advance by your probation officer.

22           You shall not engage in employment or volunteer  
23 services that allow you access to computers or minors.

24           Pursuant to the Adam Walsh Child Protection and  
25 Safety Act of 2006, you shall register with the state's sex

1 offender registration in any state where you reside or work  
2 and attend school, according to the federal and state law and  
3 all as directed by your probation officer.

4 Pursuant to the Adam Walsh Child Protection and  
5 Safety Act of 2006, you shall submit to a search of your  
6 person, property, house, residence, vehicles, papers,  
7 computer, other electronic communication or data storage  
8 devices or media, and effects at any time, by any law  
9 enforcement or probation officer with reasonable suspicion  
10 concerning unlawful conduct or a violation of a condition of  
11 supervision, upon prior notification and approval by the  
12 court or with a warrant.

13 You shall not possess or use a computer to access  
14 any online computer services in any location, including  
15 employment, without the prior approval of the probation  
16 officer. This includes any internet service providers,  
17 bulletin board systems, or any other public or private  
18 computer network.

19 You shall comply with the requirements of the  
20 computer monitoring program as administered by the probation  
21 office. You shall consent to the installation of computer  
22 monitoring software on any computer to which you have access.  
23 Installation shall be performed by the probation officer.  
24 This software may restrict and/or record any and all activity  
25 on the computer, including the capture of keystrokes,

1 application information, internet use, history, email  
2 correspondence and chat conversations. A notice will be  
3 placed on the computer at the time of installation to warn  
4 others of the existence of the monitoring software. You  
5 shall also notify others of the existence of the monitoring  
6 software. You shall not remove, tamper with, reverse  
7 engineer, or in any way circumvent the software. The costs  
8 of the monitoring shall be paid by you.

9           You shall consent to the use of WI-FI detection  
10 devices to allow the probation officer to detect the presence  
11 of wireless signals inside or outside of your residence.

12           You shall pay for the support of your child in the  
13 amount ordered by any social service agency or court of  
14 competent jurisdiction. In the absence of such order,  
15 payments are to be made on a schedule to be determined by the  
16 court at the inception of supervision, based upon your  
17 financial circumstances.

18           The court has considered your negative net worth,  
19 lack of liquid assets, your life-style, financial needs,  
20 earning potential, and the dependent relying upon you for  
21 support. And I find that you cannot pay a fine.

22           Accordingly, you shall pay the following total  
23 penalties: As to Count 3, a \$100 special assessment. No  
24 restitution. No fine.

25           And your special assessment shall be due in full

1 immediately.

2 At the time your supervision commences, the  
3 probation officer shall take into consideration your economic  
4 status as it pertains to your ability to pay the special  
5 assessment ordered and shall notify the court of any changes  
6 that may need to be made to your payment schedule.

7 Any special assessment payments may be subject to  
8 penalties for default and delinquency.

9 Nothing in the court's order shall prohibit the  
10 collection of any judgment by the United States.

11 As this judgment imposes a period of imprisonment,  
12 payment of the criminal monetary penalty shall be due during  
13 the period of imprisonment. All criminal monetary penalty  
14 payments are to be made to the clerk, US District Court,  
15 except those payments made through the Bureau of Prisons'  
16 Inmate Financial Responsibility Program.

17 And you shall notify the US Attorney for our  
18 district within 30 days of any change of your name, residence  
19 or mailing address until the special assessment imposed by  
20 the judgment is paid in full.

21 All right. Mr. Cain, I have a consent order of  
22 forfeiture. And it looks like you signed it. Did you review  
23 this with, Mr. Cejas?

24 **THE DEFENDANT:** Yes, ma'am.

25 **THE COURT:** All right. So we're going to place this

1 in your file as well.

2 And then in paragraph six of your plea agreement you  
3 waived your right to appeal your sentence and your  
4 conviction. If you change your mind on those rules, speak to  
5 Mr. Cejas. He's familiar with all of that.

6 Then we're going to recommend to the Bureau of  
7 Prisons, Mr. Cain, that they designate you either at Butner  
8 or Devens. That's a recommendation. It's not binding. The  
9 Bureau of Prisons works for themselves. They don't work for  
10 the court but we will put that in your judgment.

11 And then also the sex offender treatment in both  
12 facilities is very good so hopefully you will get in one of  
13 those two facilities.

14 Anything else, Mr. Cejas?

15 **MR. CEJAS:** No, Your Honor.

16 **THE COURT:** All right. Miss Yusi.

17 **MS. YUSI:** Your Honor, we move to dismiss the  
18 remaining counts.

19 **THE COURT:** All right. That motion is granted.

20 Everybody have a good rest of their day.

21 (Hearing adjourned at 11:55 a.m.)

22

23 CERTIFICATION

24

25 I certify that the foregoing is a correct transcript

1 from the record of proceedings in the above-entitled matter.

2  
3  
4 X           /s/ Tamora Tichenor           x

5 Tamora Tichenor

6 X   3/24/2016   x

7 Date

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